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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 CR 26 (PAE)

5 CHRISTOPHER CUMMINS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 12, 2016
11:30 a.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13
14 APPEARANCES

15 United States Department of Justice
16 Antitrust Division
17 ERIC C. HOFFMANN
BRYAN SERINO

18 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, LLP
19 Attorneys for Defendant
20 EVAN T. BARR
ELIZABETH P. KOZLOWSKI
21 SHANNON DOHERTY

H1C3CUMP

Plea

1 MR. HOFFMANN: Good afternoon, your Honor. Eric
2 Hoffmann and Bryan Serino for the United States government,
3 Department of Justice Antitrust Division.

4 THE COURT: Very good. Good morning to you.

5 MR. BARR: Good morning, your Honor. Evan Barr for
6 the defendant Mr. Cummins. With me at the table are my
7 associates Elizabeth Kozlowski and Shannon Doherty.

8 THE COURT: Good morning to all of you, and of course
9 to you, Mr. Cummins. You may all be seated. And good morning
10 as well to the members of the public who are in attendance.

11 Is there an application to seal the transcript of this
12 proceeding?

13 MR. HOFFMANN: No, there is not, your Honor.

14 THE COURT: In other words, there is no basis for
15 sealing? The fact of the cooperation is a public event?

16 MR. HOFFMANN: Correct.

17 THE COURT: Very good. All right.

18 Mr. Barr, I have been informed that your client wishes
19 today to plead guilty to a single-count information. Is that
20 correct?

21 MR. BARR: That is, your Honor.

22 THE COURT: And Mr. Cummins, is that correct that you
23 intend today to plead guilty to the information?

24 THE DEFENDANT: That is correct, your Honor.

25 THE COURT: Counsel, is the guilty plea pursuant to a

H1C3CUMP

Plea

1 plea agreement?

2 MR. HOFFMANN: Yes, it is, your Honor.

3 THE COURT: Would counsel please hand up the signed
4 plea agreement. Is the agreement identical, save for the
5 presence of signatures? Is it identical to what was sent to my
6 chambers in advance?

7 MR. HOFFMANN: Yes, it is, your Honor.

8 THE COURT: I'm going to have Mr. Smallman mark this
9 as Government Exhibit 1, and later on in the course of the
10 proceeding I will be questioning counsel and the defendant
11 about the terms of the plea agreement. All right.

12 Mr. Cummins, before accepting your guilty plea, I'm
13 going to ask you certain questions so that I can establish to
14 my satisfaction that you wish to plead guilty because you are
15 guilty and not for some other reason.

16 If you don't understand any of my questions or you'd
17 like a further opportunity to consult with your attorneys, will
18 you please let me know?

19 THE DEFENDANT: Yes, your Honor, I will.

20 THE COURT: You don't need to rise each time. Just
21 speak into the microphone, that would be fine. Thank you.

22 Are you able to speak and understand English?

23 THE DEFENDANT: Yes, I am.

24 THE COURT: Mr. Smallman, will you please place the
25 defendant under oath.

H1C3CUMP

Plea

1 THE DEPUTY CLERK: Please rise and raise your right
2 hand.

3 (Defendant sworn)

4 THE COURT: Mr. Cummins, you may be seated. Do you
5 understand that you are now under oath, and that any knowingly
6 false answers can subject you to the penalties of perjury?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: What is your full name?

9 THE DEFENDANT: My full name is Christopher Michael
10 Cummins.

11 THE COURT: How old are you?

12 THE DEFENDANT: I'm 50.

13 THE COURT: How far did you go in school?

14 THE DEFENDANT: I've completed a bachelor's degree.

15 THE COURT: Where and when was that?

16 THE DEFENDANT: I graduated in 1984 -- excuse me.
17 1988 from Fordham University.

18 THE COURT: Have you ever been treated or hospitalized
19 for any mental illness?

20 THE DEFENDANT: I have not, your Honor.

21 THE COURT: Are you now or have you recently been
22 under the care of a doctor or a psychiatrist?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Have you ever been hospitalized or treated
25 for addiction to any drugs or to alcohol?

H1C3CUMP

Plea

1 THE DEFENDANT: No, your Honor.

2 THE COURT: In the past 24 hours have you taken any
3 drugs, medicine or pills or drunk any alcoholic beverages?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Is your mind clear today?

6 THE DEFENDANT: Yes, it is, your Honor.

7 THE COURT: Do you understand what's happening in this
8 proceeding?

9 THE DEFENDANT: Yes, I do, your Honor.

10 THE COURT: Mr. Barr, do you have any doubt as to your
11 client's competence to plead at this time?

12 MR. BARR: I do not, your Honor.

13 THE COURT: How about you, Mr. Hoffmann?

14 MR. HOFFMANN: No, the government does not.

15 THE COURT: Based on the defendant's responses to my
16 questions and his demeanor as he appears before me, I find that
17 he is competent to enter a plea of guilty at this time.

18 Mr. Cummins, have you had a sufficient opportunity to
19 discuss your case with your attorneys?

20 THE DEFENDANT: Yes, I have, your Honor.

21 THE COURT: Have you had a sufficient opportunity to
22 discuss the particular charges to which you intend to plead
23 guilty, any possible defenses to that charge, and the
24 consequence of entering a plea of guilty?

25 THE DEFENDANT: Yes, your Honor.

H1C3CUMP

Plea

1 THE COURT: Are you satisfied with your attorney's
2 representation of you?

3 THE DEFENDANT: I am, your Honor.

4 THE COURT: I'm now going to explain one by one
5 certain Constitutional rights that you have. You'll be giving
6 up these rights if you enter a plea of guilty. Under the
7 Constitution and laws of the United States, you are entitled to
8 a speedy and a public trial by a jury on the charges contained
9 in the information. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: At that trial, you would be presumed to be
12 innocent, and the government would be required to prove you
13 guilty by competent evidence and beyond a reasonable doubt
14 before you could be found guilty. You would not have to prove
15 that you were innocent, and a jury of 12 people would have to
16 agree unanimously that you were guilty.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: At that trial, and at every stage of your
20 case, you would be entitled to be represented by an attorney.
21 And if you could not afford one, one would be appointed to
22 represent you free of charge.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: During a trial, the witnesses for the

H1C3CUMP

Plea

1 government would have to come to court and testify in your
2 presence and your lawyer could cross-examine the witnesses for
3 the government, object to evidence offered by the government,
4 and if you desired, issue subpoenas, offer evidence, and compel
5 witnesses to testify on your behalf.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: At a trial, although you would have the
9 right to testify if you chose to, you would also have the right
10 not to testify, and no inference or suggestion of guilt could
11 be drawn from the fact that you did not testify, if that was
12 what you chose to do.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: At trial, the government would have to
16 prove each and every part or element of a charge beyond a
17 reasonable doubt for you to be convicted of that charge.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that if you were
21 convicted at a trial, you would have the right to appeal that
22 verdict?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Even at this time, right now, as you're
25 entering this plea, you have the right to change your mind,

H1C3CUMP

Plea

1 plead not guilty, and go to trial.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: If you plead guilty, and I accept your
5 plea, you'll give up your right to a trial and the other rights
6 that I've just described. There will be no trial, and I will
7 enter a judgment of guilty and sentence you on the basis of
8 your guilty plea, after considering whatever submissions I
9 receive from you and your counsel and from the government, as
10 well as a presentence report that will be prepared by the
11 probation department.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: If you plead guilty, you'll also have to
15 give up your right not to incriminate yourself, because I will
16 ask you questions about what you did in order to satisfy myself
17 that you are guilty as charged.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Now, the document that contains the
21 particular charge to which you've indicated you wish to plead
22 guilty is called an information. It has been issued by the
23 Antitrust Division of the United States Department of Justice,
24 and the United States attorney.

25 This is a serious crime. You have a Constitutional

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Plea

1 right to require the government to present evidence to a grand
2 jury, which may or may not vote to charge you with this crime.

3 Do you understand what a grand jury is?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: If the grand jury did vote to charge you
6 with this crime, the charge would then be contained in a
7 document called an indictment, rather than an information. An
8 indictment would be signed by the United States attorney and
9 the grand jury foreperson.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you wish to give up your right to be
13 charged by a grand jury?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Counsel, has a waiver of indictment form
16 been prepared?

17 MR. HOFFMANN: Yes, your Honor.

18 THE COURT: Counsel have handed up a waiver of
19 indictment form. Mr. Barr, is this your signature on the form
20 dated today?

21 MR. BARR: Yes, it is, your Honor.

22 THE COURT: Mr. Cummins, is this your signature on the
23 form?

24 THE DEFENDANT: Yes, it is, your Honor.

25 THE COURT: Mr. Cummins, when you signed this form,

H1C3CUMP

Plea

1 did you understand that you were acknowledging your willingness
2 to give up your right to be indicted by a grand jury?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: I find a knowing and voluntary waiver of
5 the defendant's right to be indicted by a grand jury.

6 Mr. Cummins, have you received a copy of the
7 information containing the charge against you?

8 THE DEFENDANT: Yes, your Honor, I have.

9 THE COURT: Have you read it?

10 THE DEFENDANT: I have, yes, your Honor.

11 THE COURT: Have you had an opportunity to discuss the
12 informations with your attorneys?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand that you're charged in
15 the information with conspiring to violate the antitrust laws
16 of the United States in violation of Title 15, United States
17 Code, Section 1?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that the maximum
20 possible penalty for this offense is 10 years' imprisonment?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: The maximum fine for a violation of this
23 offense may reach the greatest of \$1 million, twice the gross
24 pecuniary gain derived by the conspirators from the offense or
25 twice the gross pecuniary loss to persons other than you as a

H1C3CUMP

Plea

1 result of the offense.

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that?

4 THE DEFENDANT: Yes, sir. Yes, your Honor.

5 THE COURT: For pleading guilty to this offense, you
6 may also receive a term of up to three years' supervised
7 release.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Supervised release means that you'll be
11 subject to monitoring when you are released from prison. If
12 there is no prison term in a case, supervised release is then
13 called probation. But I'm going to use the term supervised
14 release.

15 There are terms of supervised release with which a
16 person must comply. If you don't comply with them, you can be
17 returned to prison without a jury trial for all or part of the
18 term of supervised release imposed by the Court. Under those
19 circumstances, you would not be given any credit towards that
20 term for the time you served in prison as a result of your
21 sentence for this crime, nor will you necessarily be given any
22 credit towards that term for any time you had already spent on
23 post-release supervision.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

H1C3CUMP

Plea

1 THE COURT: For pleading guilty to this crime, you'll
2 be required to pay a mandatory \$100 special assessment.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: For pleading guilty to this crime, you may
6 be required to pay restitution to any person injured as a
7 result of your criminal conduct.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: For pleading guilty to this crime, you may
11 be compelled to forfeit any and all property constituting and
12 derived from proceeds obtained by your criminal conduct.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you also understand that if I accept
16 your guilty plea and adjudge you guilty, that may deprive you
17 of valuable civil rights, such as the right to vote, the right
18 to hold public office, the right to serve on a jury, and the
19 right to possess any kind of firearm?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Are you a United States citizen?

22 THE DEFENDANT: Yes, I am, your Honor.

23 THE COURT: Under current law, there are sentencing
24 guidelines as well as other factors set forth in the sentencing
25 statutes that judges are required by law to consider in

H1C3CUMP

Plea

1 determining a sentence.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Have you spoken with your attorneys about
5 the sentencing guidelines and those other factors?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that I will not be able
8 to determine the guideline range that will form a part of my
9 determination of what a reasonable sentence will be in your
10 case until after a presentence report has been prepared, and
11 until after you and your attorneys and the government have all
12 had an opportunity to challenge any of the facts set forth in
13 that report, again, prepared by the probation department?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that even after the
16 Court has determined what guideline range applies to your case,
17 under the current law the Court has the discretion to impose a
18 sentence that is higher or lower than the one recommended by
19 the sentencing guidelines?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that if your attorney or
22 anyone else has attempted to predict what your sentence will
23 be, that their prediction could be wrong. No one, not your
24 attorney, not the government's attorney, no one can give you
25 any assurance of what your sentence will be, because I'm going

H1C3CUMP

Plea

1 to decide your sentence, and I'm not going to do that now and I
2 really can't do that now. Instead, I'm going to wait until I
3 receive the presentence report prepared the probation
4 department, I'm going to study it carefully, I'm going to wait
5 until I receive the parties' respective sentencing submissions
6 and review those carefully as well. I'm going to do my own
7 independent calculation of how the sentencing guidelines apply
8 in your case. But most of all, I'm going to determine what a
9 reasonable sentence is for you, based on all of the factors
10 contained in the sentencing statute, which is known as Section
11 3553(a).

12 Do you understand all that?

13 THE DEFENDANT: I understand, your Honor.

14 THE COURT: Have you discussed these issues and the
15 overall sentencing process with your attorneys?

16 THE DEFENDANT: Yes, I have, your Honor.

17 THE COURT: Even if your sentence is different from
18 what your attorney or anyone else has told you it might be,
19 even if it is different from what you expect, you will still be
20 bound by your guilty plea, and you'll not be allowed to
21 withdraw your plea of guilty.

22 Do you understand that?

23 THE DEFENDANT: Yes, I do, your Honor.

24 THE COURT: Has anyone threatened you or anyone else
25 or forced you in any way to plead guilty?

H1C3CUMP

Plea

1 THE DEFENDANT: No, your Honor.

2 THE COURT: Counsel have handed up the plea agreement
3 which has been marked as Government Exhibit 1. Looking at the
4 back here, I see, Mr. Hoffmann, what appears to be your
5 signature as well as that of five other trial attorneys
6 associated with the Antitrust Division of the Department of
7 Justice.

8 Is that your signature and are those the signatures of
9 your colleagues?

10 MR. HOFFMANN: Yes, they are, your Honor.

11 THE COURT: Mr. Barr, I see here your signature. Is
12 that your signature?

13 MR. BARR: Yes, it is.

14 THE COURT: Mr. Cummins, I see your signature dated
15 December 21. Is that your signature?

16 THE DEFENDANT: Yes, it is, your Honor.

17 THE COURT: Did you read this agreement before you
18 signed it?

19 THE DEFENDANT: Yes, I did, your Honor.

20 THE COURT: Did you discuss it with your attorneys
21 before you signed it?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Did you believe that you understood the
24 agreement at the time you signed it?

25 THE DEFENDANT: Yes, your Honor, I did.

H1C3CUMP

Plea

1 THE COURT: Did you willingly sign the agreement?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Did anyone force you to sign the
4 agreement?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Mr. Hoffmann, will you please summarize
7 the material terms of the agreement.

8 MR. HOFFMANN: The main terms first as to the parties'
9 agreement between Mr. Cummins and the United States government,
10 which is defined as the Antitrust Component of the Department
11 of Justice. The agreement creates obligations on the parts of
12 both parties.

13 Mr. Cummins' agreements, or his obligations are set
14 forth in paragraph two. He will cooperate fully and truthfully
15 with the government's ongoing investigation into the foreign
16 exchange market, that includes when asked to do so by the
17 government. He will testify truthfully at any grand jury
18 proceeding, trial-related hearing. When asked to do so by the
19 government, he will turn over any documents that the government
20 asks him to that are not otherwise privileged, and he agrees to
21 commit no further crimes, amongst other provisions.

22 In return, the government is agreeing under paragraph
23 four they will not bring further criminal charges against
24 Mr. Cummins for any crimes committed that were undertaken in
25 furtherance of the charged combination conspiracy to fix the

H1C3CUMP

Plea

1 prices of Central European and Eastern European, Middle Eastern
2 and African currencies that is described in the information.

3 Additionally, under paragraph 11, the government has
4 obligated itself that if Mr. Cummins upholds and carries out
5 all of his obligations, and if the government determines that
6 Mr. Cummins has provided substantial assistance in any federal
7 proceeding, at the appropriate time it will submit a motion
8 under United States sentencing guidelines 5K1.1, bringing the
9 facts of Mr. Cummins' assistance to your Honor's attention, and
10 will request the Court to consider in its discretion a sentence
11 below the applicable sentencing guidelines range.

12 Mr. Cummins has also given up certain rights. He's
13 agreeing to plead guilty to a one-count information charging
14 him with a combination conspiracy to fix prices in CEEMEA
15 currencies from at as early as 2007 to at least July 2013.

16 I think those are the main points.

17 THE COURT: Very good. Thank you. Very helpful,
18 Mr. Hoffmann.

19 Mr. Barr, do you agree with the account that
20 Mr. Hoffmann has given of the terms that he addressed?

21 MR. BARR: I do, your Honor.

22 THE COURT: Anything else you want to put on the
23 record?

24 MR. BARR: No.

25 THE COURT: Mr. Cummins, did you hear and understand

H1C3CUMP

Plea

1 Mr. Hoffmann as he summarized those particular terms?

2 THE DEFENDANT: Yes, your Honor, I did.

3 THE COURT: Do you have any agreement with the
4 government about your plea or your sentence that has been left
5 out of this written agreement?

6 THE DEFENDANT: No, your Honor, I do not.

7 THE COURT: I want to just highlight a few terms of
8 the agreement. Do you understand that the agreement does not
9 bind any federal, state or local prosecuting authority, other
10 than the Antitrust Division of the Department of Justice?

11 THE DEFENDANT: Yes, I do, your Honor.

12 THE COURT: Do you understand that the agreement
13 provides that you must cooperate fully with the Antitrust
14 Division or any attorneys or agents of the United States whom
15 it designates?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that the agreement
18 provides that if the Antitrust Division, which I'll also call
19 the government here, determines that you have provided
20 substantial assistance in an investigation or prosecution, and
21 if it determines that you have fully complied with the
22 understandings specified in the agreement, then the government
23 will file a motion under Section 5K1.1 of the sentencing
24 guidelines asking the Court to sentence you in light of the
25 various factors set forth in Section 5K1.1(a)(1) through (5)?

H1C3CUMP

Plea

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: To unpack that a little bit, do you
3 understand that the factors that the Court may consider under
4 that section include the following: The significance and
5 usefulness of your assistance, taking into consideration the
6 government's evaluation of the assistance you rendered; the
7 truthfulness, completeness, and reliability of any information
8 or testimony you provided; the nature and extent of your
9 assistance; any injury you suffered or any danger or risk of
10 injury to you or your family as a result of your assistance;
11 and the timeliness of your assistance.

12 Do you understand all that?

13 THE DEFENDANT: Yes, I do, your Honor.

14 THE COURT: Do you understand that even if the
15 government files such a motion, that the sentence to be imposed
16 remains within the sole discretion of the Court?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that even if the Court
19 were to deny a 5K1.1 motion, you would not be entitled to
20 withdraw your plea?

21 THE DEFENDANT: I understand, your Honor.

22 THE COURT: Do you understand that even if the Court
23 imposes a sentence that is unsatisfactory to you, you would not
24 then be entitled to withdraw your plea?

25 THE DEFENDANT: Yes, your Honor.

H1C3CUMP

Plea

1 THE COURT: Do you understand that if the government
2 determines that you have not provided substantial assistance in
3 an investigation or prosecution, or that you have violated any
4 provision of the agreement, then the government is not
5 obligated to file a motion under Section 5K1.1 of the
6 sentencing guidelines?

7 THE DEFENDANT: I understand, your Honor.

8 THE COURT: Do you understand that you will not be
9 entitled to withdraw your guilty plea just because the
10 government decides not to file the motion?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand as well that the
13 agreement provides that if you commit any further crimes or if
14 it is determined that you have given any false, incomplete or
15 misleading testimony or information, or that you've otherwise
16 violated any provision of the agreement, you shall be subject
17 to prosecution for any federal violations that the government
18 has knowledge of, including perjury and obstruction of justice?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand as well that under the
21 agreement if you commit any further crimes, or again if it is
22 determined that you gave false, incomplete, or misleading
23 testimony or information, or you've otherwise violated any
24 other provision of the agreement, that all statements made by
25 you to the government or to other designated law enforcement

H1C3CUMP

Plea

1 agents, and any testimony you've given, whether to a grand jury
2 or another tribunal, all that may be admissible in evidence in
3 any criminal proceeding against you?

4 Do you understand that?

5 THE DEFENDANT: Yes, I do, your Honor.

6 THE COURT: Do you understand in fact that the
7 agreement provides that you may not assert a claim that such
8 statements should be suppressed, and in fact that you have
9 waived your right to claim that such statements should be
10 suppressed?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Has anyone made any promise or done
13 anything other than what's contained in the plea agreement to
14 induce you to plead guilty?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Has anyone made a promise to you as to
17 what your sentence will be?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Do you still wish to plead guilty today
20 pursuant to the agreement?

21 THE DEFENDANT: Yes, your Honor. I do.

22 THE COURT: At this point I'd like you to tell me in
23 your own words what you did that makes you believe you're
24 guilty of the charge in the information. And it looks to me
25 like you're about to read.

H1C3CUMP

Plea

1 THE DEFENDANT: Yes, sir.

2 THE COURT: That's fine. I just want to ask of you,
3 what it is you're about to read is something I take it you have
4 read to yourself before and reviewed?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: You're confident that regardless of who
7 worked with you on the preparation of the language there,
8 everything that you're about to read to me is truthful and
9 accurate?

10 THE DEFENDANT: Yes, your Honor, it is.

11 THE COURT: Go ahead.

12 THE DEFENDANT: Your Honor, between 2007 and 2013, I
13 worked as a foreign currency dealer at a major bank located in
14 Manhattan. I specialized in trading a variety of Central and
15 Eastern European, Middle Eastern, and African emerging market
16 currencies.

17 My customers included financial entities such as hedge
18 funds and pension funds that needed to exchange large sums of
19 U.S. dollars for an equivalent amount of an emerging market
20 currency. In addition, I placed trades in these emerging
21 market currencies with other banks, foreign exchange dealers,
22 including through the use of electronic trading platforms.

23 The customers and counterparties I traded with were
24 located here in New York, in other states in the United States,
25 as well as overseas.

H1C3CUMP

Plea

1 In the course of my work at the bank, I agreed with
2 other foreign currency dealers employed at some competing banks
3 located in New York and elsewhere on taking various actions
4 designed to reduce competition in the foreign exchange market.
5 These actions included, for example, agreeing with competitors
6 to coordinate price, timing and size of bids and offers put
7 forth on a public electronic trading platform, and agreeing to
8 refrain from trading when one of my co-conspirators had a
9 stronger need to trade.

10 Many of the communications with these other traders
11 occurred in private chat rooms and telephone calls made on both
12 recorded phone lines and personal cell phones.

13 As part of this scheme, I also entered into non-bona
14 fide trades designed to be visible on a public trading
15 platform, and then off center cancel those same trades shortly
16 thereafter in a non-public manner.

17 The purpose of these transactions which I engaged in
18 from my bank's offices was to manipulate the price of the
19 currency pairation.

20 I understood that my conduct in connection with this
21 scheme was wrong at the time, and for that I am deeply, deeply
22 sorry.

23 THE COURT: Thank you. You mentioned a moment ago
24 that you knew that what you were doing was wrong. Just to be
25 clear, did you know as well you were committing a crime?

H1C3CUMP

Plea

1 THE DEFENDANT: I did not. I was aware that -- that
2 if my compliance officers within the bank been aware, it would
3 have been a big issue for them.

4 THE COURT: Mr. Barr, ordinarily part of the
5 allocution entails my eliciting from the defendant that he knew
6 not only that what he was doing was in some conceptual sense
7 wrong, but that it was a violation of the law, even if the
8 defendant didn't know the specific law.

9 I am going to encourage you to briefly speak with your
10 client for a moment. Given the very detailed and I thought
11 helpful allocution that I just received, it would be surprising
12 if a person did not understand that the range of price fixing
13 that was just attested to was not in violation of the law.

14 Would you take a moment with your client?

15 MR. BARR: I would, your Honor. May I also advise the
16 Court, Mr. Hoffmann and I have discussed this issue as well.
17 And specifically with respect to the Sherman Act requirements,
18 and obviously he's better situated to address that than I am,
19 but it's my understanding that with respect to this particular
20 offense, the elements are satisfied so long as the defendant
21 knowingly entered into the agreement to reduce competition. So
22 this is unusual in that sense, and I also didn't know that
23 until getting engaged in this case.

24 THE COURT: Notwithstanding that, and that's an issue
25 that has not been before me or briefed, I would welcome your

H1C3CUMP

Plea

1 speaking to your client. And I'll hear from you in a moment as
2 to whether it is really the case that your client did not
3 believe his conduct was against the law.

4 MR. BARR: Okay.

5 THE COURT: Thank you.

6 (Defendant conferring with his counsel)

7 THE COURT: Mr. Barr, have you had a chance to speak
8 with your client?

9 MR. BARR: Yes. One moment.

10 THE COURT: Take your time.

11 (Defendant conferring with his counsel)

12 MR. DePAUL: Thank you, your Honor.

13 THE COURT: Mr. Barr, look, I recognize, having
14 conferred briefly with my law clerk, I think you may well be
15 right. It is an extraneous element, if you will, of the
16 statute that the defendant knew that he was committing a crime.
17 In that respect, it is an unusual statute.

18 Nonetheless, having put the question to him, I want to
19 make sure you have circled back with him to see that that
20 answer is in fact accurate. I don't want to leave an
21 uncorrected statement like that on the record, if there is some
22 doubt as to whether or not what he just said now is a nuanced
23 account of what his state of mind was.

24 (Defendant conferring with his counsel)

25 THE DEFENDANT: Your Honor --

H1C3CUMP

Plea

1 THE COURT: Just kindly speak into the microphone.

2 THE DEFENDANT: Yes. Your Honor, I understood
3 generally that in doing these things, I was breaking the laws
4 and values that apply to trading and traders.

5 THE COURT: Very good. Thank you.

6 Mr. Cummins, are you pleading guilty today because you
7 are in fact guilty?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you pleading guilty today voluntarily
10 and of your own free will?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Does government counsel agree there is a
13 sufficient factual predicate for a guilty plea?

14 MR. HOFFMANN: We do, your Honor.

15 THE COURT: Does defense counsel?

16 MR. BARR: Yes, your Honor.

17 THE COURT: Does defense counsel know of any valid
18 defense that would prevail at trial or any reason why your
19 client should not be permitted to plead guilty?

20 MR. BARR: No, your Honor.

21 THE COURT: Mr. Cummins, because you acknowledge that
22 you are in fact guilty as charged in the information, because
23 I'm satisfied that you know of your rights, including your
24 right to go to trial, because I'm satisfied that you are aware
25 of the consequences of your plea, including the sentence that

H1C3CUMP

Plea

1 may be imposed, and because I find that you're voluntarily
2 pleading guilty, I accept your guilty plea and enter a judgment
3 of guilty on the one count to which you have pled guilty.

4 Now, there will come a point at which we'll move to
5 the sentencing phase of your case, and what I'm about to say
6 relates to that, and I ask you to pay close attention.

7 The probation department is going to want at that time
8 to interview you in connection with the presentence report that
9 it will prepare. Given the nature of your plea agreement, it's
10 premature to commission the probation report, but there will
11 come a point at which that happens. If you choose to speak to
12 the probation department, please make sure that anything you
13 say to them is truthful and accurate. I read those reports
14 very carefully, and along with the parties' sentencing
15 submissions, they are quite important to me in deciding what a
16 reasonable sentence is in a particular case.

17 You and your counsel have a right to examine the
18 report, and to comment on it at the time of sentencing. I urge
19 you to do so, and to discuss it with your attorneys before
20 sentencing. If there are any mistakes in it, please point them
21 out to your counsel so they can bring those mistakes to my
22 attention before sentencing.

23 Will you agree to do that?

24 THE DEFENDANT: Yes, your Honor, I will.

25 THE COURT: Mr. Barr, in light of the nature of the

H1C3CUMP

Plea

1 plea here, I take it this is not a case in which you are
2 seeking an expedited sentence.

3 MR. BARR: Correct.

4 THE COURT: I needed to ask. All right.

5 I gather counsel are seeking a control date about six
6 months from now?

7 MR. HOFFMANN: Correct, your Honor.

8 THE COURT: Is that realistic or ought we just put a
9 control date later? I'm happy to do six months from now, but
10 if it is inevitable it will get rolled over, might as well get
11 it done now.

12 MR. HOFFMANN: It will most likely rollover.

13 THE COURT: Does it make more sense to put this in the
14 late fall? You tell me. Trying to save a tree.

15 MR. HOFFMANN: I think late fall.

16 THE COURT: As a control date, about how November 3 at
17 10 a.m. That's a Friday.

18 MR. HOFFMANN: That's fine, your Honor.

19 MR. BARR: Thank you.

20 THE COURT: Obviously, if in the event that the
21 circumstances of the case make that date premature, I'm happy
22 to entertain an application to adjourn the sentence.

23 Once it becomes clear that the sentencing date is real
24 and not merely a control date, defense counsel, you must
25 promptly arrange for your client to be interviewed by the

H1C3CUMP

Plea

1 probation department, and government counsel, you must promptly
2 provide your case summary to the probation department for
3 inclusion in the presentence report.

4 Defense submissions will be due two weeks before
5 sentencing. The government's submission will be due one week
6 before hand.

7 If you look online, you'll see my individual rules
8 with respect to the filing of sentencing submissions with the
9 clerk of the court, you'll find them to be very customary for
10 the district in terms of the sort of material that is exempt
11 from public filing, which includes, among other things,
12 personal medical information and the like. All right.

13 I believe that's all we need to take up with respect
14 to the entry of the plea, but I understand that no bail has yet
15 been set but that the parties have reached an agreement.
16 Anyone want to put that on the record, please?

17 MR. BARR: Yes.

18 THE COURT: Is it correct you've reached an agreement
19 as to the proposed bail terms?

20 MR. BARR: Yes, we have, your Honor. We've agreed on
21 the following terms: A \$50,000 personal recognizance bond,
22 Mr. Cummins to surrender his passport, which we have
23 accomplished this morning at pretrial, regular pretrial
24 supervision with reporting by phone or Internet, and
25 unrestricted travel within the Continental U.S.

H1C3CUMP

Plea

1 THE COURT: All right. And does government counsel
2 agree that those terms are sufficient to assure Mr. Cummins'
3 appearance?

4 MR. HOFFMANN: The government does, your Honor.

5 THE COURT: Having reviewed the pretrial services
6 report briefly this morning, I too agree that those are
7 reasonable terms, and will be happy to approve those terms of
8 release.

9 I am, though, obliged, Mr. Cummins, to tell you the
10 following: It's imperative that you abide by the terms of
11 release. Those conditions will be embodied in a court order.
12 A violation of any of them, for example, exceeding the travel
13 restrictions or failing to comply with the conditions of
14 pretrial supervision, all of those, a violation of any of those
15 conditions can have very serious consequences for you at the
16 time of sentencing.

17 THE DEFENDANT: I understand, your Honor.

18 THE COURT: Do you also understand that you must be in
19 this courtroom for sentencing at the time and date that I've
20 set or any adjournment date that later is set, or you will be
21 guilty of a separate crime called bail jumping and subject to a
22 fine and/or prison term in addition to whatever sentence you
23 may receive for the crime to which you've just pled guilty?

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor, I understand.

H1C3CUMP

Plea

1 THE COURT: Very well. Anything further from the
2 government?

3 MR. HOFFMANN: Yes, the government at this time, my
4 colleague would like to address to your attention a motion and
5 proposed order addressing notification to potential victims.

6 THE COURT: One moment. Yes, that was forwarded to my
7 chambers, and I'm happy to hear from your colleague. Is that
8 Mr. Serino?

9 MR. SERINO: Yes, good morning. The government has an
10 unopposed motion and proposed order for alternative victim
11 notification. In this case, the number of potential victims as
12 well as the factual circumstances of identifying and locating
13 each victim make it impracticable for the government to provide
14 individualized notice to each victim of any public court
15 proceeding or any parole proceeding in this case.

16 As a result, the government respectfully requests
17 authorization for a reasonable procedure to do alternative
18 notification. Namely (1) being in contact and notifying lead
19 counsel for the plaintiffs in a related civil suit, and (2)
20 providing notice on the Department of Justice's website of
21 upcoming court appearances.

22 THE COURT: Very good. Mr. Barr?

23 MR. BARR: We have no objection.

24 THE COURT: I'm fine with that. Mr. Serino, let me
25 ask you a question or two to have some context. It sounds like

H1C3CUMP

Plea

1 the civil suit in this case predated the filing of the
2 information. What's the history of that suit, how long has it
3 been out there?

4 MR. SERINO: Sure, your Honor.

5 THE COURT: What's that status, where is it?

6 MR. SERINO: That appears before Judge Schofield and
7 it was filed in 2013. The allegations in that civil suit focus
8 on a wide array of conduct in the foreign exchange market,
9 although it primarily focuses on trading involving the euro and
10 U.S. dollar currency pairing, although it does encapsulate
11 broader activity.

12 THE COURT: Your understanding is the conduct to which
13 Mr. Cummins has just pled guilty describes a subset but a fully
14 contained subset of the conduct at issue in the civil
15 litigation?

16 MR. SERINO: Yes, your Honor.

17 THE COURT: And has a class been certified in that
18 case?

19 MR. SERINO: Yes, sir.

20 THE COURT: In other words, it becomes reasonable to
21 expect that lead counsel in that case representing a certified
22 class will either actually or constructively put the class, if
23 you will, on notice or take advantage of the fact of the
24 notification here.

25 MR. SERINO: Correct, your Honor.

H1C3CUMP

Plea

1 THE COURT: Very helpful. And at the outset of the
2 hearing I inquired of the government counsel whether you are
3 seeking the sealing of the courtroom, and not always but very
4 often in the context of a cooperator plea that request is made.
5 It wasn't made here. To the extent that anyone can clarify on
6 the record, if you're comfortable doing so, I'm interested in
7 why that request wasn't made here.

8 I'm never going to object to an open courtroom, of
9 course, but I am always curious when the ordinary norm is
10 departed from.

11 MR. HOFFMANN: It is a departure. It has to do with
12 the antitrust practice. We do not normally seek to keep the
13 plea agreement off the public docket. We did not seek that in
14 this case. But it is different from the practice that you're
15 probably more used to seeing from the AUSAs here in the
16 Southern District.

17 THE COURT: I take it part of it is what is happening
18 here is historical cooperation, right? It doesn't sound as if
19 this were a case involving a proactive tape making cooperator
20 where you would be more averse to a public proceeding. It
21 sounds like implicitly this is a historical case as reflected
22 in the fact of the three- or four-year-old parallel civil
23 litigation.

24 MR. HOFFMANN: The opportunities for -- they're past.

25 THE COURT: Very good. Well, I've reviewed the draft

H1C3CUMP

Plea

1 order and I'm glad to sign it. I take it counsel would like me
2 to publicly docket this once there is an information number in
3 this case. Correct?

4 MR. HOFFMANN: Correct, your Honor.

5 THE COURT: Very good. Anything further from the
6 government?

7 MR. HOFFMANN: No, your Honor.

8 THE COURT: Anything further from the defense?

9 MR. BARR: No, your Honor.

10 THE COURT: Thank you. We stand adjourned.

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